

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:21-CV-463-JRG
)	
SAMSUNG ELECTRONICS CO., LTD.,)	JURY TRIAL DEMANDED
SAMSUNG ELECTRONICS AMERICA,)	
INC., SAMSUNG SEMICONDUCTOR,)	
INC.,)	
)	
Defendants.)	

**Opposed Motion to Continue Hearing of Samsung's Motion to Stay (Dkt 122) Contained in
a list of Outstanding Motions Set for Hearing in (Dkt. 142)**

1. Plaintiff Netlist, Inc. (“Netlist”) respectfully requests a brief continuance of the hearing on the outstanding motions listed in the Court’s Ordering Setting Motions Hearing (Dkt. 142) from its current setting on January 17, 2023, to the next convenient date on or after January 31, 2023, because Netlist’s lead counsel is expected to be in trial in the Middle District of Florida during the current setting, and has a second trial in Atlanta, Georgia that starts soon thereafter on January 23, 2023.

2. On January 5, 2023, the Court set the hearing in question for January 17, 2023 at 1:30 pm CT (Dkt. 142) for the following motions:

- Opposed MOTION to Stay Pending *Inter Partes* Review and Ninth Circuit Appeal by SAMSUNG (Dkt. 74);
- Opposed SEALED MOTION FOR LEAVE TO AMEND PRELIMINARY INFRINGEMENT CONTENTIONS by Netlist (Dkt. 113);
- SEALED PATENT MOTION TO COMPEL DEPOSITION OF JUNG BAE LEE by Netlist (Dkt. 121);
- Unopposed MOTION for Leave to File a Supplement to Pending Motion to Stay Pending Ninth Circuit Appeal and *Inter Partes* Review [Dkt 74] by SAMSUNG (Dkt. 122);
- Opposed SEALED MOTION to Compel Production of Testimony from Prior Netlist Litigations Asserting Related Patents Against the Same Category of Accused Products by SAMSUNG (Dkt. 124);
- Opposed SEALED MOTION to Strike Netlist's Late Disclosure of Netlist Products Purportedly Practicing the Asserted Patents and Late Disclosure of Netlist's Conception, Reduction to Practice, and Third Party Disclosure Documents by SAMSUNG (Dkt. 126);
- Opposed SEALED MOTION for Leave to Amend Preliminary Infringement Contentions by Netlist (Dkt. 130).

Dkt. 142 at 1-2.¹

3. The Court’s order requires that lead and local counsel for each party attend. Dkt. 142 at 1. The Court further ordered that the parties meet and confer on the premises at the Sam B.

¹ Netlist’s Motion to Compel Production of Documents by Defendants’ Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., And Samsung Semiconductor, Inc. (Dkt. 125) appears to have been inadvertently omitted from the list of outstanding motions in Dkt. 142.

Hall, Jr. Federal Courthouse beginning at 9:00 a.m. CT in an effort to narrow or resolve the disputes at issue prior to the hearing. *Id.*

4. Netlist's lead counsel, Jason Sheasby, has direct trial scheduling conflicts with the currently set hearing date. Mr. Sheasby is currently in trial in the matter of *Depuy Synthes Products, Inc. et al v. Veterinary Orthopedic Implants, Inc.*, 3:18-cv-01342-HES-PDB, in the Middle District of Florida. Jury deliberations are expected to last until January 17 or January 18, 2023 given that January 16 is a federal holiday. Immediately after the conclusion of trial in the *Depuy v. VOI* matter, Mr. Sheasby will be traveling to San Francisco, California for pre-arbitration preparation related to a confidential arbitration. The hearing in the confidential arbitration matter is to be held in Atlanta, Georgia, and is scheduled to begin on January 23, 2023, and last until January 28, 2023.

5. On January 6, 2023, Netlist informed counsel for Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc. ("Samsung") of this conflict and Netlist's request to continue the hearing to the next convenient date on or after January 31, 2023. Samsung does not oppose Netlist's Motion to continue all the pending motions to a later date except for its Motion to Stay Pending *Inter Partes* Review and Ninth Circuit Appeal (Dkt. 122). Samsung insists that the Parties ask the Court to reschedule the hearing for the Motion to Stay (Dkt. 122) only to an earlier date of either January 19 (Thursday) or January 20, 2023 (Friday). Netlist cannot agree to Samsung's proposal because during that time, Mr. Sheasby is scheduled to attend in-person pre-arbitration preparations in San Francisco, California, before traveling to the in-person arbitration trial set for January 23, 2023 (Monday), in Atlanta Georgia. It would be extremely impractical, if not logistically impossible, for Mr. Sheasby to attend a hearing on Samsung's Motion to Stay in person on either of Samsung's proposed dates given his

current trial, scheduled pre-arbitration preparations, upcoming trial, and related travel logistics.

6. In an effort to compromise, Counsel for Samsung proposed that if Mr. Sheasby could not attend a hearing on Samsung's Motion to Stay (Dkt. 122) on either January 19 or January 20, Counsel for Samsung would agree to ask the Court to "excuse" Mr. Sheasby from attendance, however this is also not agreeable to Netlist. Netlist should have the same opportunity as Samsung to have its chosen counsel argue Samsung's Motion to Stay. Further, it is Netlist's position that Mr. Sheasby's attendance as lead counsel is necessary for the parties to have a productive meet and confer to narrow or resolve the disputes prior to the hearing.

7. Netlist's request to move the current hearing date of January 17, 2023, to the next convenient date on or after January 31, 2023, as it relates to *all* Motions currently scheduled to be heard on January 17, including Samsung's Motion to Stay, is not a litigation tactic and Samsung should not be allowed to benefit from Mr. Sheasby's scheduling conflicts.

8. For the foregoing reasons, Netlist respectfully requests that the Court continue the hearing on *all* outstanding motions from its current setting on January 17, 2023 to the next convenient date on or after January 31, 2023. Netlist also request that Netlist's Motion to Compel Production of Documents by Defendants' Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Semiconductor, Inc. (Dkt. 125) be added to the list of outstanding motions set to be heard in the Court's January 5, 2023 Order (Dkt. 142).

Dated: January 11, 2023

Respectfully submitted,

/s/ Samuel F. Baxter

Samuel F. Baxter
Texas State Bar No. 01938000
sbaxter@mckoolsmith.com
Jennifer L. Truelove
Texas State Bar No. 24012906
jtruelove@mckoolsmith.com
MCKOOL SMITH, P.C.
104 East Houston Street Suite 300
Marshall, TX 75670
Telephone: (903) 923-9000
Facsimile: (903) 923-9099

Jason G. Sheasby (*pro hac vice*)
jsheasby@irell.com
Annita Zhong, PhD (*pro hac vice*)
hzhong@irell.com
Thomas C. Werner (*pro hac vice*)
twerner@irell.com
Yanan Zhao (*pro hac vice*)
yzhao@irell.com
Michael W. Tezyan (*pro hac vice*)
mtezyan@irell.com

IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
Tel. (310) 277-1010
Fax (310) 203-7199

Attorneys for Plaintiff Netlist, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on January 11, 2023, a copy of the foregoing was served to all counsel of record.

/s/ Jennifer Truelove
Jennifer L. Truelove

CERTIFICATE OF CONFERENCE

I hereby certify that local counsel for the parties met and conferred on the issues raised in this motion, and that the parties are at an impasse only as it relates to Samsung's Motion to Stay (Dkt. 122). Samsung's counsel communicated to counsel for Netlist that they do not oppose resetting the remainder of the Motions contained in the Court's Order of January 5, 2023 to the next convenient date on or after January 31, 2023. Samsung's counsel indicated to counsel for Netlist that they would agree to reset the Motion to Stay from the current setting on January 17, 2023 to either January 19 or January 20 in order to accommodate Mr. Sheasby's trial schedule. Further, Samsung's counsel indicated to counsel for Netlist that they would agree to ask the Court to excuse Mr. Sheasby's attendance if Mr. Sheasby is unable to attend a hearing on either of those dates due to his trial schedule. Netlist's counsel advised counsel for Samsung that they could not agree to the current setting or either of Samsung's proposed settings on the Motion to Stay as indicated in this Motion and would request that all Motions contained in the Court's Order of January 5, 2023 be reset to the next convenient date on or after January 31, 2023.

/s/ Jennifer Truelove
Jennifer L. Truelove